

35-08/MEU/SL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PAKRI TANKERS OU,

Plaintiff,

08 Civ. 2424 (GBD)

-against-

**AFFIRMATION OF  
MICHAEL E. UNGER**

AYRES SHIPPING INC., LASKARIDIS  
SHIPPING CO. LTD., LAVINIA CORP.  
and RIGA TRANSPORT FLEET,

Defendant.

MICHAEL E. UNGER, affirms the following under penalty of perjury:

1. I am an attorney admitted to practice before this Court and am a member of the law firm of Freehill Hogan & Mahar, LLP, attorneys for the Defendant AYRES SHIPPING INC. (hereinafter "AYRES"). I submit this affirmation in further support of the motion by Defendant AYRES SHIPPING INC. for an order compelling Plaintiff PAKRI TANKERS OU to post counter-security or in the alternative seeking an order vacating the attachment and dismissing the action with prejudice.

2. On April 4, 2008, I spoke with Mr. Chin, one of the Orders and Judgments' Clerks, in respect to the procedure for filing a voluntary dismissal pursuant to Fed. R. Civ. P. 41. I was advised that notwithstanding that Rule 41(a)(1)(i) permits the filing of a notice of dismissal on the part of the plaintiff at any time before an answer or summary judgment motion is filed on behalf of the defendant, the practice within the Southern District of New York is for all such notices to be "So Ordered" by the assigned Judge. This is in order to provide the District Judge

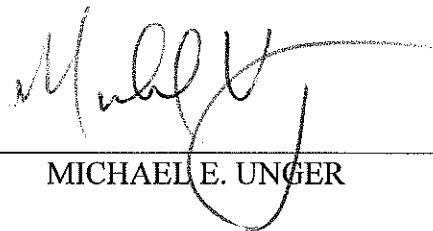
with notice of the action being taken and so as to approve same in addition to allowing the Court to control its docket.

3. Clearly Mr. Mansuy, counsel for Plaintiff PAKRI, is aware of the proper process to be followed when seeking a notice of voluntary dismissal under Fed.R.Civ.P. 41(a)(1)(i). Attached hereto as Exhibit A is a notice of voluntary dismissal which was properly filed by Mr. Mansuy in the matter of *Lucas Vaga Shipping (London) Co. Inc v. Emporia Navigation S.A.*, 07 CV 607 (CSH).

4. As is clear from the electronic docket kept in that matter, also attached as part of Exhibit A, Mr. Mansuy submitted the notice to the Orders and Judgments Clerk via e-mail as evidenced by the lack of a rejection notice as is found on the docket sheet for the instant action. (See attached Exhibit B).

5. Further, Mr. Mansuy actually signed the notice in the *Lucas Vaga* matter as required by Rule 11 rather than using the “/s/” as permitted in other filings which are directly filed via ECF.

Dated: New York, New York  
April 30, 2008



A handwritten signature in black ink, appearing to read 'Michael E. Unger', is written over a horizontal line.

MICHAEL E. UNGER

# Exhibit A

## Unger Affirmation

HAIGHTS.

DEORCHIS WIENER & PARTNERS, LLP  
61 Broadway, 26<sup>th</sup> Floor  
New York, New York 10006-2802  
(212) 344-4700

Attorneys for Plaintiff  
LUCKAS VAGA SHIPPING (LONDON) COMPANY, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LUCKAS VAGA SHIPPING (LONDON)  
COMPANY, INC.,

Plaintiff,

07 Civ. 607 (CSH)

-against-

EMPORIO NAVIGATION S.A.,

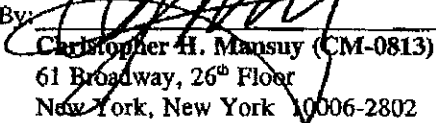
Defendant.

**NOTICE OF  
VOLUNTARY DISMISSAL**

There being no appearance, answer or motion for summary judgment by defendant, plaintiff hereby dismisses this action pursuant to F.R.Civ.P. 41(a)(1)(i) without prejudice and without costs.

Dated: New York, New York  
March 21, 2007

DeORCHIS WIENER & PARTNERS, LLP  
Attorneys for Plaintiff  
LUCKAS VAGA SHIPPING (LONDON)  
COMPANY, INC.

By:   
Christopher H. Mansuy (CM-0813)  
61 Broadway, 26<sup>th</sup> Floor  
New York, New York 10006-2802  
(212) 344-4700  
Our File: 904-1A

03/26/07

**SO ORDERED:**

W:\904-1\904-1(A)\Legal\Notice Of Voluntary Dismissal, 03-21-07.DOC 3/21/07-

  
U.S.D.J.

CLOSED, ECF, RELATED

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-00607-CSH**

Lukas Vaga Shipping (London) Company, Inc. v. Emporio  
 Navigation S.A.

Assigned to: Judge Charles S. Haight

Demand: \$990,000

Related Case: 1:06-cv-09945-CSH

Cause: 28:1333 Admiralty

Date Filed: 01/26/2007

Date Terminated: 03/26/2007

Jury Demand: None

Nature of Suit: 120 Contract: Marine

Jurisdiction: Federal Question

**Plaintiff**

**Lukas Vaga Shipping (London)  
 Company, Inc.**

represented by **Christopher Henry Mansuy**  
 DeOrchis, Wiener & Partners, LLP  
 61 Broadway  
 26th Floor  
 New York, NY 10006  
 212-344-4700  
 Fax: 212-422-5299  
 Email: cmansuy@mahoneykeane.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Emporio Navigation S.A.**

Date Filed	#	Docket Text
01/26/2007	<u>1</u>	COMPLAINT against Emporio Navigation S.A.. (Filing Fee \$ 350.00, Receipt Number 604103) Document filed by Lukas Vaga Shipping (London) Company, Inc..(laq) Additional attachment(s) added on 2/2/2007 (Bravo, Lorraine). (Entered: 01/31/2007)
01/26/2007		SUMMONS ISSUED as to Emporio Navigation S.A. (laq) (Entered: 01/31/2007)
01/26/2007	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Lukas Vaga Shipping (London) Company, Inc.(laq) Additional attachment(s) added on 2/2/2007 (Bravo, Lorraine). (Entered: 01/31/2007)
01/26/2007		CASE REFERRED TO Judge Charles S. Haight as possibly related to 1:06-cv-

		9945. (laq) (Entered: 01/31/2007)
01/26/2007		Case Designated ECF. (laq) (Entered: 01/31/2007)
01/26/2007	<u>3</u>	ORDER APPOINTING PROCESS SERVER re Maritime Attachment (Christopher Mansuy) (Signed by Judge Leonard B. Sand on 1/26/07) (cd) (Entered: 02/02/2007)
01/26/2007	<u>4</u>	EX PARTER ORDER directing the clerk to issue Maritime Attachment and Garnishment re Emporio Navigation. (Signed by Judge Leonard B. Sand, Part I on 1/26/07) (cd) (Entered: 02/02/2007)
02/06/2007		CASE ACCEPTED AS RELATED. Create association to 1:06-cv-09945-CSH. Notice of Assignment to follow. (ae) (Entered: 02/07/2007)
02/06/2007	<u>5</u>	NOTICE OF CASE ASSIGNMENT to Judge Charles S. Haight. Judge Unassigned is no longer assigned to the case. (ae) Additional attachment(s) added on 2/7/2007 (Espinell, Antonia). (Entered: 02/07/2007)
02/06/2007		Magistrate Judge Kevin Nathaniel Fox is so designated. (ae) (Entered: 02/07/2007)
02/07/2007		Sent electronic notice to the attorney(s) of record. (ae) (Entered: 02/07/2007)
03/26/2007	<u>6</u>	NOTICE of Voluntary Dismissal pursuant to Rule 41(a)(1)(i) of the F.R.C.P. without prejudice and without costs. (Signed by Judge Charles S. Haight on 3/26/07) (db) (Entered: 03/27/2007)

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# Exhibit B

Unger Affirmation

ECF, RELATED

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-02424-GBD**

Pakri Tankers Ou v. Ayres Shipping Inc. et al  
Assigned to: Judge George B. Daniels  
Related Case: 1:08-cv-00554-GBD  
Cause: 28:1333 Admiralty

Date Filed: 03/10/2008  
Jury Demand: None  
Nature of Suit: 120 Contract: Marine  
Jurisdiction: Federal Question

**Plaintiff**

**Pakri Tankers Ou**

represented by **Christopher Henry Mansuy**  
DeOrchis, Wiener & Partners, LLP  
111 Broadway  
10th Floor  
New York, NY 10006  
212-385 1422  
Email: cmansuy@mahoneykeane.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Ayres Shipping Inc.**

represented by **Michael E. Unger**  
Freehill, Hogan & Mahar, LLP  
80 Pine Street  
New York, NY 10005  
(212) 425-1900  
Fax: (212) 425-1901  
Email: Unger@freehill.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Laskaridis Shipping Co. LTD**

**Defendant**

**Lavinia Corp**

**Defendant**

**Riga Transport Fleet**

**Counter Claimant**



**Ayres Shipping Inc.**

represented by **Michael E. Unger**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Counter Defendant****Pakri Tankers Ou**

represented by **Christopher Henry Mansuy**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
03/10/2008	<u>1</u>	COMPLAINT against Ayres Shipping Inc., Laskaridis Shipping Co. LTD, Lavinia Corp, Riga Transport Fleet. (Filing Fee \$ 350.00, Receipt Number 644189)Document filed by Pakri Tankers Ou.(rdz) (Entered: 03/13/2008)
03/10/2008		SUMMONS ISSUED as to Ayres Shipping Inc., Laskaridis Shipping Co. LTD, Lavinia Corp, Riga Transport Fleet. (rdz) (Entered: 03/13/2008)
03/10/2008		CASE REFERRED TO Judge George B. Daniels as possibly Related to 08-cv-554. (rdz) (Entered: 03/13/2008)
03/10/2008		Case Designated ECF. (rdz) (Entered: 03/13/2008)
03/10/2008	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Pakri Tankers Ou.(rdz) (Entered: 03/13/2008)
03/17/2008	<u>3</u>	EX PARTE ORDER FOR PROCESS OF MARITIME ATTACHMENT that Process of Maritime Attachment and Garnishment shall issue against all tangible or intangible property belonging to, claimed by or being held for Defendants by any garnishees within this District, including but not limited to, American Express Bank, Bank of America, Bank of New York, Mellon Bank, Citibank, HSBC Bank USA NA, J.P.Morgan Chase Bank, Standard Chartered Bank, Wachovia Bank N.A., Deutsche Bank & Trust and UBS in the amount of \$3,749,086.40, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. Any person claiming interest in the property attached or garnished pursuant to said Order shall, upon application to the Court, be entitled to a prompt hearing at which Plaintiffs shall be required to show cause why the attachment and garnishment should not be vacated or other relief granted. Supplemental process enforcing the Court's Order may be issued by the Clerk upon application without further Order of the Court. Pursuant to F.R.C.P. 5(b) (2)(D) each garnishee may consent, in writing, to accept service by any other means. A copy of this Order be attached to and served with said Process of Maritime Attachment and Garnishment. It is further Ordered that Christopher H. Manusy, Edward A. Keane, Cornelius A. Mahoney,

		Garth S. Wolfson, Jorge A. Rodriguez, Marie Cush, or any other partner, associate paralegal or other agent of Mahoney & Keane, LLP be and is hereby appointed, in addition to the United States Marshal, to serve the Process of Attachment and Garnishment and the Verified Complaint, together with any interrogatories, upon garnishee(s) American Express Bank, Bank of America, Bank of New York, Mellon Bank, Citibank, HSBC Bank USA NA, J.P. Morgan Chase Bank, Standard Chartered Bank, Wachovia Bank N.A., Deutsche Bank & Trust and UBS, together with any other garnishee(s) who (based upon information developed subsequent hereto by Plaintiffs) may hold assets of, for, or on behalf of Defendants Ayres Shipping Inc, Laskaridis Shipping co. Ltd. ("Laskaridis"), Lavinia Corp. ("Lavinia") and Riga Transport Fleet ("RIGA"). (Signed by Judge George B. Daniels on 3/10/08) (dj) (Entered: 03/19/2008)
03/17/2008		MARITIME ATTACHMENT AND GARNISHMENT ISSUED as to Ayres Shipping Inc., Laskaridis Shipping Co. LTD, Lavinia Corp, Riga Transport Fleet on 3/17/08 in the amount of \$3,749,086.40. (dj) (Entered: 03/19/2008)
03/26/2008		CASE ACCEPTED AS RELATED. Create association to 1:08-cv-00554-GBD. Notice of Assignment to follow. (jeh) (Entered: 03/31/2008)
03/26/2008		Magistrate Judge James C. Francis is so designated. (jeh) (Entered: 03/31/2008)
03/26/2008	<u>4</u>	NOTICE OF CASE ASSIGNMENT to Judge George B. Daniels. Judge Unassigned is no longer assigned to the case. (jeh) (Entered: 03/31/2008)
04/02/2008	<u>5</u>	ORDER DIRECTING RELEASE OF FUNDS, any funds restrained pursuant to the Process of Maritime Attachment and Garnishment authorized by this Court, being sent to/from defendant be released in accordance with the original wire transfer instructions. (Signed by Judge George B. Daniels on 3/27/08) (cd) (Entered: 04/02/2008)
04/03/2008	<u>6</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - NOTICE of dismissal. Document filed by Pakri Tankers Ou. (Mansuy, Christopher) Modified on 4/3/2008 (db). (Entered: 04/03/2008)
04/03/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR. Note to Attorney Christopher Henry Mansuy to E-MAIL Document No. <u>6</u> Notice of Voluntary Dismissal to orders_and_judgments@nysd.uscourts.gov. This document is not filed via ECF. (db) (Entered: 04/03/2008)
04/03/2008	<u>7</u>	ANSWER to Complaint. Document filed by Ayres Shipping Inc..(Unger, Michael) (Entered: 04/03/2008)
04/04/2008	<u>8</u>	COUNTERCLAIM against Pakri Tankers Ou.Document filed by Ayres Shipping Inc..(Unger, Michael) (Entered: 04/04/2008)

04/10/2008	<u>9</u>	MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case. Document filed by Ayres Shipping Inc.. Return Date set for 4/25/2008 at 10:00 AM.(Unger, Michael) (Entered: 04/10/2008)
04/10/2008	<u>10</u>	MEMORANDUM OF LAW in Support re: <u>9</u> MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case.. Document filed by Ayres Shipping Inc.. (Unger, Michael) (Entered: 04/10/2008)
04/10/2008	<u>11</u>	AFFIRMATION of Michael E. Unger in Support re: <u>9</u> MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case.. Document filed by Ayres Shipping Inc.. (Unger, Michael) (Entered: 04/10/2008)
04/21/2008	<u>12</u>	DECLARATION of christopher h. mansuy in Opposition re: <u>9</u> MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case.. Document filed by Pakri Tankers Ou. (Attachments: # <u>1</u> Exhibit mansuy 1, # <u>2</u> Exhibit mansuy 2, # <u>3</u> Exhibit mansuy 3, # <u>4</u> Exhibit mansuy 4, # <u>5</u> Exhibit mansuy5, # <u>6</u> Exhibit mansuy 6)(Mansuy, Christopher) (Entered: 04/21/2008)
04/21/2008	<u>13</u>	DECLARATION of DIMITRIJS SAVINS in Opposition re: <u>9</u> MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case.. Document filed by Pakri Tankers Ou. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Mansuy, Christopher) (Entered: 04/21/2008)
04/21/2008	<u>14</u>	MEMORANDUM OF LAW in Opposition re: <u>9</u> MOTION Counter-Security or in the alternative, vacature of Plaintiff's attachment and dismissal of this case.. Document filed by Pakri Tankers Ou. (Mansuy, Christopher) (Entered: 04/21/2008)
04/25/2008	<u>15</u>	ENDORSED LETTER addressed to Judge George B. Daniels from Micahel Unger dated 4/24/08 re: Request to adjourn the motion for counter-security until 5/1/08. ENDORSEMENT: So ordered. (Signed by Judge George B. Daniels on 4/25/08) (cd) (Entered: 04/25/2008)
04/25/2008		***DELETED DOCUMENT. Deleted document number <u>16</u> Endorsed Letter. The document was incorrectly filed in this case. (jp) (Entered: 04/25/2008)

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